

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

DOWNEY UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2014010322

ORDER DENYING MOTION TO
CONSOLIDATE AND TO CONTINUE

On September 23, 2013, Parents and Student (collectively, Student) filed a Request for Due Process Hearing (Complaint) in OAH case number 2013090741 (First Case), naming Downey Unified School District (District). On November 4, 2013, Student filed a First Amended Complaint in the First Case, pursuant to the parties' stipulation, and the dates for hearing the First Case were continued, pursuant to statute. On December 13, 2013, District requested a continuance of the prehearing conference (PHC) and hearing dates in the First Case, due to the unavailability of District witnesses and District counsel, and OAH granted the request, over Student's objection.

On January 8, 2014, District filed a Request for Due Process Hearing (District's Complaint) in OAH case number 2014010322 (Second Case), naming Student.

On January 8, 2014, District filed a Motion to Consolidate the First Case with the Second Case. At the PHC held on January 10, 2014, in the First Case, District counsel clarified that District was requesting not only consolidation but also to continue the due process hearing date in the First Case

On January 13, 2014, Student filed an objection to consolidation on the grounds that continuing the hearing as requested by District should consolidation be granted was not appropriate and would prejudice Student.

Analysis

Although no statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases, OAH will generally consolidate matters that involve: a common question of law and/or fact; the same parties; and when consolidation of the matters furthers the interests of judicial economy, such as by saving time or preventing inconsistent rulings. (See Gov. Code, § 11507.3, subd. (a) [administrative proceedings may be consolidated if they involve a common question of law or fact]; Code of Civ. Proc., § 1048, subd. (a) [same applies to civil cases].)

Here, the First Case and Second Case involve a common question of law or fact, in that they both involve the District's conduct with respect to assessing Student for special education and related services in response to Parents' request in June 2013. Specifically, Student alleges that District deprived Student a FAPE by failing to assess Student. District alleges it provided an assessment plan to Student on November 1, 2013, and Student has not consented to the assessment plan. However, consolidation of the First Case and the Second Case does not further the interests of judicial economy. District was aware of the complaint since September and the amended complaint, which it stipulated to, was filed in November of 2013. District has now filed the Second Case in such close proximity to the hearing dates of the First Case, that, as a practical matter, the two cases cannot be consolidated without continuing the First Case for the third time. Had District truly felt the issue in the Second Case was important to be considered, it should have filed its request to consolidate closer in time to the filing date of the First Case, rather than wait until the hearing dates were imminent.

As to District's request to continue the First Case to accommodate its belated consolidation request, a due process hearing must be held, and a decision rendered, within 45 days of receipt of the complaint, unless good cause supports the granting of a continuance. (Ed. Code, §§ 56502, subd. (f) & 56505, subd. (f)(1)(C)(3).) There is no good cause to continue the First Case for a third time, especially where, as here, District had full knowledge of the facts upon which the Second Case is based well before the time it filed the Second Case in January 2014, and well before it requested a continuance of the First Case in December, 2013. Indeed, Student's refusal to consent to District's assessment plan was a subject of District's Motion to Dismiss the First Case, which motion District filed on December 12, 2013. In the District's Complaint in the Second Case, District alleges that it was engaged in discussions with Student during November and December 2013, in an attempt to obtain consent to the assessments. However, the pendency of such discussions for approximately two months, when the assessment issue was also the subject of the pending First Case, is not a sufficient explanation for the District's failure to file the Second Case until well after the District knew of facts that supported such a filing.

Under these circumstances, there is no good cause to continue the First Case, particularly when weighing Student's right to a speedy disposition against District's conduct in delaying its own filing.

ORDER

1. District's Motion to Consolidate this matter with the First Case is denied.
2. District's Motion to Continue the First Case is denied.
3. All dates remain as scheduled in both the First Case and Second Case.

Dated: January 21, 2014

/s/

ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings